

FIFTY-THIRD DAY
(Tuesday, April 14, 1981)

The Senate met at 10:30 o'clock a.m., pursuant to adjournment and was called to order by President Pro Tempore Traeger.

The roll was called and the following Senators were present: Andujar, Blake, Brooks, Brown, Caperton, Doggett, Farabee, Glasgow, Harris, Howard, Jones, Kothmann, Leedom, Mauzy, McKnight, Meier, Mengden, Ogg, Parker, Richards, Santiesteban, Sarpalius, Short, Snelson, Traeger, Travis, Truan, Uribe, Vale, Williams.

Absent-excused: Wilson.

A quorum was announced present.

The Reverend Dr. Gerald Mann, Senate Chaplain, offered the invocation as follows:

Our Father, bring Young and Crippin safely back down to earth—and interest rates too. Amen.

On motion of Senator Andujar and by unanimous consent, the invocation in yesterday's Journal will be amended to read, "So, we thank You for this body of men and lady,".

On motion of Senator Brooks and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal as amended was approved.

LEAVE OF ABSENCE

Senator Wilson was granted leave of absence for today on account of illness on motion of Senator Glasgow.

MESSAGE FROM THE HOUSE

House Chamber
April 14, 1981

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

Sir: I am directed by the House to inform the Senate that the House has passed the following:

S.C.R. 87, Commending Wichita Falls, Texas, on being named one of the 10 all-American Cities by the National Municipal League.

S.B. 101, Relating to an increase in benefits for certain annuitants of the Employees Retirement System of Texas.

S.B. 123, Relating to the conditions under which shock probation may be granted. (With amendments)

S.B. 185, Relating to the pay grade of public school personnel in services related to special education. (With amendment)

S.B. 305, Relating to the Advisory Council for Technical-Vocational Education.

S.B. 351, Relating to the maximum amount of life insurance coverage that can be sold to an individual under a group policy. (With amendments)

S.B. 586, Relating to the appointment of a special county judge in certain counties. (With amendment)

H.C.R. 149, Authorizing either house to adjourn from April 15 through April 20.

H.B. 189, Relating to an exemption from the franchise tax for corporations that are condominium management associations.

H.B. 357, Relating to compulsory attendance in public schools.

H.C.R. 140, Honoring the Kerrville Folk Festival.

The House has adopted the Conference Committee Report on **S.B. 767** by a record vote of 135 ayes, 1 noes, 1 present-not voting.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

REPORTS OF STANDING COMMITTEES

Senator Brooks submitted the following report for the Committee on Human Resources:

S.B. 904 (Amended)
S.B. 866 (Amended)
C.S.S.B. 1093 (Read first time)
C.S.S.B. 874 (Read first time)
C.S.S.B. 188 (Read first time)
C.S.S.B. 1105 (Read first time)

Senator Farabee submitted the following report for the Committee on State Affairs:

S.B. 1096 (Amended)
S.B. 852 (Amended)
S.B. 662
S.B. 377 (Amended)
H.B. 36
S.J.R. 42
H.B. 742
C.S.S.B. 919 (Read first time)
C.S.S.B. 988 (Read first time)
C.S.S.J.R. 53 (Read first time)
C.S.S.B. 928 (Read first time)

SENATE BILLS ON FIRST READING

On motion of Senator Brooks and by unanimous consent, the following bills were introduced, read first time and referred to the Committee indicated:

S.B. 1209 by Brown Intergovernmental Relations
Relating to the creation, establishment, administration, maintenance, operation, and financing of the Calhoun County Hospital District.

S.B. 1210 by Uribe Intergovernmental Relations
Relating to the authority of the Commissioners Court of Cameron County to establish and operate a water supply or sewage system.

S.B. 1211 by Ogg Intergovernmental Relations
Relating to the creation of four judicial districts composed of Harris County.

S.B. 1212 by Caperton Human Resources
Relating to the regulation of health care facilities that treat alcoholics; amending Chapter 553, Acts of the 65th Legislature, Regular Session, 1977 (Article 5561cc, Vernon's Texas Civil Statutes).

HOUSE BILLS ON FIRST READING

The following bills received from the House were read the first time and referred to the Committee indicated:

H.B. 2310, To Committee on Economic Development.

H.B. 1843, To Committee on Intergovernmental Relations.

H.B. 1182, To Committee on Education.

H.B. 1000, To Committee on Natural Resources.

H.B. 793, To Committee on Economic Development.

CO-AUTHOR OF SENATE BILL 714

On motion of Senator Ogg and by unanimous consent, Senator Mauzy will be shown as Co-author of **S.B. 714**.

CO-AUTHOR OF SENATE BILL 1105

On motion of Senator Ogg and by unanimous consent, Senator Brooks will be shown as Co-author of **S.B. 1105**.

SENATE CONCURRENT RESOLUTION 88

Senator Brooks offered the following resolution:

BE IT RESOLVED by the Senate of the 67th Legislature, the House of Representatives concurring, that in compliance with Article III, Section 17, of the Constitution of the State of Texas and in observance of Easter, either House is hereby granted permission to adjourn from Thursday, April 16 through Monday, April 20, 1981.

The resolution was read.

On motion of Senator Brooks and by unanimous consent, the resolution was considered immediately and was adopted.

HOUSE CONCURRENT RESOLUTION 140

The President Pro Tempore laid before the Senate the following resolution:

H.C.R. 140, Honoring the Kerrville Folk Festival.

The resolution was read.

On motion of Senator Snelson and by unanimous consent, the resolution was considered immediately and was adopted.

SENATE BILL 370 WITH HOUSE AMENDMENT

Senator Farabee called **S.B. 370** from the President's table for consideration of the House amendment to the bill.

The President Pro Tempore laid the bill and the House amendment before the Senate.

Floor Amendment No. 1 - Davis

Amend Senate Bill 370, as Engrossed, by deleting on Page 7, Line 17, the word "last".

The amendment was read.

Senator Farabee moved to concur in the House amendment.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Wilson.

SENATE BILL 979 RECOMMITTED

On motion of Senator Mauzy and by unanimous consent, **S.B. 979** was recommitted to the Committee on Jurisprudence.

SENATE RULE 103 SUSPENDED

On motion of Senator Mauzy and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on Jurisprudence might consider **S.B. 979** today.

SENATE BILL 872 ON SECOND READING

On motion of Senator Sarpalius and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 872, Relating to the number of days of service required for certain public school vocational agriculture teachers.

The bill was read second time and was passed to engrossment.

SENATE BILL 872 ON THIRD READING

Senator Sarpalius moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **S.B. 872** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Wilson.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Wilson.

SENATE BILL 109 ON SECOND READING

On motion of Senator Doggett and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 109, Relating to continuation of the Texas Optometry Board and regulation of optometrists.

The bill was read second time.

Senator Doggett offered the following committee amendment to the bill:

Amend Senate Bill No. 109 by striking all below the enacting clause and substituting the following:

SECTION 1. Section 1.02, Texas Optometry Act, as amended (Article 4552-1.01 et seq., Vernon's Texas Civil Statutes), is amended by adding Subsections (4) and (5) to read as follows:

"(4) 'Person' means a natural person or association of natural persons, trustee, receiver, partnership, corporation, organization, or the manager, agent, servant, or employee of any of them.

"(5) For the purposes of this Act, 'dispensing optician' or 'ophthalmic dispenser' means a person not licensed as an optometrist or physician who sells or delivers to the consumer fabricated and finished spectacle lenses, frames, contact lenses, or other ophthalmic devices prescribed by an optometrist or physician."

SECTION 2. Sections 2.01, 2.01a, 2.02, 2.03, 2.04, 2.05, 2.06, 2.08, 2.14, 2.15, 3.01, 3.02, 3.03, 3.06, 4.01, 4.02, 4.03, 4.04, 5.09, 5.10, 5.11, 5.13, and 5.15, Texas Optometry Act, as amended (Article 4552-1.01 et seq., Vernon's Texas Civil Statutes), are amended to read as follows:

"Section 2.01. **BOARD CREATED.** The Texas Optometry Board is created. The board is composed of nine ~~six~~ members appointed by the governor with the advice and consent of the Senate.

"Section 2.01a. **APPLICATION OF SUNSET ACT.** The Texas Optometry Board is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1993 [1981].

"Section 2.02. QUALIFICATIONS OF MEMBERS. (a) Six members [To be qualified for appointment as a member of the board, a person] must be [a] licensed optometrists [optometrist] who have [has] been residents [a resident] of this state actually engaged in the practice of optometry in this state for the period of five years immediately preceding their [his] appointment. Three of the six optometrist members must be affiliated with the Texas Optometric Association, Inc., and the other three optometrist members must be affiliated with the Texas Association of Optometrists, Inc. A board member may not simultaneously be a member of both the Texas Optometric Association, Inc., and the Texas Association of Optometrists, Inc.

"(b) Three members must be representatives of the general public. A person is not eligible for appointment as a public member if the person or the person's spouse:

"(1) is licensed by an occupational regulatory agency in the field of health care;

"(2) is employed by or participates in the management of or is an officer or paid consultant of a business entity or other organization that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment; or

"(3) owns, controls, or has, directly or indirectly, a financial interest in a business entity or other organization that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment.

"(c) A member or employee of the board may not be: [A person is disqualified from appointment to the board if he is]

"(1) a member of the faculty of any college of optometry, [if he is] an agent, paid consultant, officer, or employee of any wholesale optical company, or have [if he has] a financial interest in [any] such a college or company;

"(2) an officer, employee, or paid consultant of a trade association in the health-care industry; or

"(3) related within the second degree by affinity or within the second degree by consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the field of health care.

"(d) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-9c, Vernon's Texas Civil Statutes), may not serve as a member of the board or act as the general counsel to the board.

"(e) It is a ground for removal from the board if a member:

"(1) does not have at the time of appointment the qualifications required by Subsection (a) or (b) of this section for appointment to the board; or

"(2) does not maintain during the service on the board the qualifications required by Subsection (a), (b), (c), or (d) of this section for appointment to the board.

"(f) The validity of an action of the board is not affected by the fact that it was taken when a ground for removal of a member of the board existed.

"(g) It shall be the duty of any board member who no longer maintains the qualifications required in Subsection (a), (b), (c), or (d) of this section to immediately inform the governor and the attorney general of that fact and to resign from the board.

"(h) Upon complaint by any person to the attorney general that a member of the board no longer maintains the qualifications required in Subsection (a), (b), (c), or (d) of this section, the attorney general shall investigate the complaint; and if the attorney general determines that there is reason to believe the complaint is valid, the attorney general shall institute suit in Travis County district court to have the board member in question removed from office.

"(i) No person may serve more than a total of 12 years on the board. Time served on the board prior to September 1, 1981, shall not count toward this limitation. [At all times there shall be a minimum of two-thirds of the board who are members of a state optometric association which is recognized by and affiliated with the American Optometric Association.]

"Section 2.03. TERMS OF OFFICE. The [Except for the initial appointees, the] members of the board hold office for staggered terms of six years, with the terms of one member affiliated with the Texas Optometric Association, Inc., one member affiliated with the Texas Association of Optometrists, Inc., and one public member expiring on January 31 of each odd-numbered year [two members expiring on January 31 of odd-numbered years. In making the initial appointments, the governor shall designate two for terms expiring on January 31, 1971, two for terms expiring on January 31, 1973, and two for terms expiring on January 31, 1975].

"Section 2.04. ORGANIZATION OF BOARD. Every two years [At its first meeting after the appointment of any one or more members,] the board shall elect a chairman, a vice-chairman, and a secretary-treasurer, provided that the chairman and vice-chairman shall not be from the same group of the three groups represented on the board.

"Section 2.05. MEETINGS. (a) The board shall hold regular meetings at least twice a year at which examinations of applicants for licenses shall be given. [Not less than 10 days' notice of each regular meeting shall be given by publication in at least three daily newspapers of general circulation to be selected by the board.]

"(b) Special meetings shall be held upon the request of five [four] members of the board or upon the call of the chairman.

"(c) Five [Four] members constitute a quorum for the transaction of business. If a quorum is not present on the day set for any meeting, those present may adjourn from day to day until a quorum is present, but this period may not be longer than three successive days.

"Section 2.06. RECORDS. (a) The board shall preserve a record of its proceedings in a book kept for that purpose.

"(b) A record shall be kept showing the name, age, and present legal and mailing address of each applicant for examination, the name and location of the school of optometry from which he holds credentials, and the time devoted to the study and practice of optometry, together with such information as the board may desire to record. Said record shall also show whether applicants were rejected or licensed and shall be prima facie evidence of all matters therein contained. The secretary of the board shall on or before March 1 of each year send a certified copy of said record to the secretary of state for permanent record. A certified copy of said record with the hand and seal of the secretary of said board to the secretary of state, shall be admitted as evidence in all courts.

"(c) Every license and annual renewal certificate issued shall be numbered and recorded in a book kept by the secretary of the board.

"(d) The board shall prepare information of consumer interest describing the regulatory functions of the board and describing the board's procedures by which consumer complaints are filed with and resolved by the board. The board shall make the information available to the general public and appropriate state agencies.

"(e) Within a reasonable time after the completion of an examination of each patient, the examining optometrist shall present to the patient a prescription, a bill, or a receipt containing the license number and name of the optometrist performing the examination. Individual professional liability of the examining optometrist is not affected by this subsection.

“(f) The board shall keep an information file about each complaint filed with the board relating to a licensee. If a written complaint is filed with the board relating to a licensee, the board, at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notification would jeopardize an undercover investigation.”

“Section 2.08. EMPLOYEES OF BOARD. The board shall have the power to employ an executive director as the executive head of the agency and to employ the services of stenographers, secretaries, inspectors, legal assistants and other personnel necessary to carry out the provisions of this Act. In all hearings before the board, and in all suits in the courts in which the board is a party, the staff attorney employed by the board may at the board’s discretion be an attorney of record for the board; provided, however, that when the county attorney, district attorney or attorney general is also an attorney of record, the board’s staff attorney shall be subordinate to such county attorney, district attorney, or attorney general, and nothing herein shall be construed to deprive, limit, or exclude the county attorney, district attorney, or attorney general from their right to appear as the board’s attorney in the respective courts to which they are assigned by the constitution to represent the state. In all suits in which the board is a party, the board’s staff attorney may also be appointed as special assistant to the county attorney, district attorney, or attorney general, provided, however, that such members of the board’s staff shall be paid by the board.”

“Section 2.14. RULES AND REGULATIONS. The board may by a majority vote of a quorum [shall] promulgate procedural rules and regulations. The board may by a majority vote of each of the three groups represented on the board promulgate substantive rules and set fees. However, the board may not [only, consistent with the provisions of this Act, to govern the conduct of its business and proceedings. Notwithstanding any other provision of this Act, the board shall not have any power or authority to amend or enlarge upon any provision of this Act by rule or regulation or by rule or regulation to change the meaning in any manner whatsoever of any provision of this Act or to] promulgate any rule or regulation which is in any way contrary to the underlying and fundamental purposes of this Act or [to] make any rule or regulation which is unreasonable, arbitrary, capricious, or illegal[or unnecessary]. The board may not promulgate any substantive rule prior to submitting the proposed rule to the attorney general for a ruling on the proposed rule’s validity.

“Section 2.15. DISPOSITION OF FEES. (a) Except as provided by Subsection (b) [(e)] of this section, the fund realized from all fees payable under this Act shall first be applied to the payment of all necessary expenses of the board, and the remainder shall be applied, by order of the board, to compensate members of the board. Each member of the board is entitled to a per diem as set by legislative appropriation for each day that the member engaged in the business of the board [The compensation of the members of the board shall be a per diem of \$25 per day for each day they are actually engaged in performing their duties; provided, however, they shall not draw compensation for more than 40 days in any one fiscal year], and in addition to the per diem provided for herein, each member [they] shall be entitled to [their] actual traveling expenses in performance of his [their] duties. Each board member shall make out, under oath, a complete statement of the number of days engaged and the amount of his expenses when presenting same for payment.

“(b) [The secretary of the board shall receive compensation to be set by the board exclusive of necessary expenses in the performance of his duties.

“[(e)] The funds realized from annual renewal fees shall be distributed as follows: \$10 of each renewal fee collected by the board shall be dedicated to

the University of Houston Development Fund. The license money placed in the development fund pursuant hereto shall be utilized solely for scholarships and improvements in the physical facilities, including library, of the School of Optometry.

"The remainder of the fees attributable to annual renewal fees and all other fees payable under this Act shall be placed in the state treasury to the credit of a special fund to be known as the 'Optometry Fund,' and the comptroller shall upon requisition of the board from time to time draw warrants upon the state treasurer for the amounts specified in such requisition; provided, however, the fees from this optometry fund shall be expended as specified by itemized appropriation in the General Appropriations bill and shall be used by the Texas Optometry Board, and under its direction in carrying out its statutory duties."

"Section 3.01. MUST PASS EXAMINATION. Every person hereafter desiring to be licensed to practice optometry in this state shall be required to pass the examination given by the Texas Optometry Board. However, the board may adopt substantive rules to authorize the waiver of this or other license requirements for an applicant with a valid license from another state having, at the time of the applicant's initial licensure in that state, license requirements and continuing education requirements substantially equivalent to those currently required in this state.

"Section 3.02. APPLICATION. (a) The applicant shall make application, furnishing to the secretary of the board, on forms to be furnished by the board, satisfactory sworn evidence that he has attained the age of majority [21 years], is of good moral character, ~~[is a citizen of the United States,]~~ and has at least graduated from a first grade high school, or has a preliminary education equivalent to permit him to matriculate in The University of Texas, and that he has attended and graduated from a reputable university or college of optometry which meets with the requirements of the board, and such other information as the board may deem necessary for the enforcement of this Act.

"(b) A university or school of optometry is reputable whose entrance requirements and course of instruction are as high as those adopted by the better class of universities and schools of optometry and whose course of instruction shall be equivalent to not less than six terms of eight months each, and approved by the board. Provided, however, that the provisions of this subsection shall only apply to those students enrolling in school from and after the effective date of this Act.

"(c) Any person who has met all requirements of Subsection (a) above~~[-except United States Citizenship,]~~ shall be eligible to take the examination given by the Texas Optometry Board. ~~The[, if such person has filed a declaration of intention to become a citizen of the United States and is currently employed as a teacher or instructor at a reputable university or School of Optometry which meets all requirements of the board. Provided, however, if such person does not become a United States Citizen within 5 years from the date of licensure under this Act, this license shall not be renewed and shall automatically expire at the end of such 5 year period without further action by the board. Provided further, that the]~~ board may cancel, revoke, or suspend the license of such person if it finds that~~[- (1) such licensee has abandoned his intentions and his efforts to become a citizen of the United States; or (2) such licensee is no longer employed as a teacher or instructor at a reputable university or School of Optometry which meets all the requirements of the board, and such licensee is not a citizen of the United States; or (3)]~~ such licensee has violated any provision of Section 4.04 of this Act.

"Section 3.03. FEES. The board shall establish reasonable and necessary fees for the administration of this Act ~~[charge a fee of \$35 for examining an~~

~~applicant for license, which fee must accompany the application. If the applicant who, because of failure to pass the examination, be refused a license, he shall be permitted to take a second examination upon payment of \$12.50, provided the second examination is taken within a period of one year. The fee for issuing a license shall be \$25 to be paid to the secretary of the board]. If anyone successfully passing the examination and meeting the requirements of the board has not paid the fee for issuance of a license within 90 days after having been notified by registered mail at the address given on his examination papers, or at the time of the examination that he is eligible for same, such person shall by his own act have waived his right to obtain his license, and the board may at its discretion refuse to issue such license until such person has taken and successfully passed another examination."~~

"Section 3.06. CONDUCT OF EXAMINATION. All examinations shall be conducted in writing and by such other means as the board shall determine adequate to ascertain the qualifications of applicants and in such manner as shall be entirely fair and impartial to all individuals and every recognized school of optometry. All applicants examined at the same time shall be given the same written examination. Within 30 days after the day on which a licensing examination is administered under this Act, the board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the board shall notify each examinee of the results of the examination within two weeks after the day that the board receives the results from the testing service. If the notice of the examination results will be delayed for longer than 90 days after the examination date, the board shall notify the examinee of the reason for the delay before the 90th day. If requested in writing by a person who fails the licensing examination administered under this Act, the board shall furnish the person with an analysis of the person's performance on the examination."

"Section 4.01. ANNUAL RENEWAL. (a) On or before January 1 of each year, every licensed optometrist in this state shall pay to the secretary-treasurer of the board an annual renewal fee for the renewal of his license to practice optometry for the current year. The amount of the fee shall be as determined by the board, not to exceed \$150 [~~\$75~~]. A person may renew an unexpired license by paying to the board before the expiration date of the license the required renewal fee. If a person's license has been expired for not longer than 180 days, the person may renew the license by paying to the board the required renewal fee and a fee that is one-half of the examination fee for the license. If a person's license has been expired for longer than 180 days but less than three years, the person may renew the license by paying to the board all unpaid renewal fees and a fee that is equal to the examination fee for the license. If a person's license has been expired for three years or longer, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

"(b) On receipt of the required fees [~~said renewal fee~~], the board shall issue an annual renewal certificate bearing the number of his license, the year for which renewed, and such other information from the records of the board as said board may deem necessary for the proper enforcement of this Act.

"(c) ~~When the person's license has been expired for three years, the [an optometrist shall fail to pay his annual renewal fee by March 1 of each year, it shall be the duty of the board to notify such optometrist by registered mail at his last known address that said annual renewal fee is due and unpaid. Provided, that if said annual renewal fee is not paid within 60 days from the date of mailing of such notice, the board shall then cancel said license. The] board shall~~

notify the county clerk of the county in which such license may have been recorded of the ~~such~~ cancellation, and such clerk, upon receipt of such notice from said board, shall enter upon the optometry register of such county the fact that such license has been cancelled for nonpayment of annual renewal fee and shall notify the board in writing that such entry has been made.

"(d) Practicing optometry without an annual renewal certificate for the current year as provided herein, shall have the same force and effect and be subject to all penalties of practicing optometry without a license.

~~"[(e) After the board has cancelled a license as provided for in this section, the board may thereafter, in its discretion, refuse to issue a new license until such optometrist whose license has been cancelled for nonpayment of annual renewal fee, has passed the regular examination for license as provided for by this Act.]~~

"Section 4.02. RENEWAL AFTER DISCHARGE FROM MILITARY. Any licensed optometrist whose renewal certificate has expired while he has been engaged ~~[in federal service or]~~ in active duty with any United States military service or with the United States Public Health Service, engaged ~~in full-time federal service, or engaged in [the Army of the United States, the United States Navy, the United States Marine Corps, the United States Coast Guard, the United States Maritime Service or the State Militia called into service or]~~ training or education under the supervision of the United States preliminary to induction into the military service, may have his renewal certificate reinstated without paying any lapsed renewal fee or registration fee, or without passing an examination, if within one year after termination of said service, training or education, other than by dishonorable discharge, he furnishes the board with affidavit to the effect that he has been so engaged and that his service, training or education has been so terminated.

"Section 4.03. LOST OR DESTROYED LICENSE. If any license issued under this law shall be lost or destroyed, the holder of said license shall make an affidavit of its loss or destruction, and that he is the same person to whom such license was issued, and such other information as may be desired by the board, and shall ~~[]~~ upon payment of a fee of \$10 ~~[\$2.50]~~ be granted a license under this law.

"Section 4.04. REVOCATION, SUSPENSION, ETC. (a) By five or more votes, the [The] board may revoke or suspend a license, probate a license suspension, or reprimand a licensee~~[, in its discretion, refuse to issue a license to any applicant and may cancel, revoke or suspend the operation of any license]~~ if it finds that:

"(1) ~~[the applicant or licensee is guilty of gross immorality;~~

"~~[(2)]~~ the applicant or licensee is guilty of any fraud, deceit, dishonesty, or misrepresentation in the practice of optometry or in his seeking admission to such practice;

"~~(2) [(3)]~~ the applicant or licensee is unfit or incompetent by reason of negligence;

"~~(3) [(4)]~~ the applicant or licensee has been convicted of a felony or a misdemeanor which involves moral turpitude;

"~~(4) [(5)]~~ the applicant or licensee is an habitual drunkard or is addicted to the use of morphine, cocaine or other drugs having similar effect or has become insane or has been adjudged by a court of competent jurisdiction to be of unsound mind;

"~~(5) [(6)]~~ the licensee has directly or indirectly employed, hired, procured, or induced a person, not licensed to practice optometry in this state, to so practice;

~~"(6) [(7)]~~ the licensee directly or indirectly aids or abets in the practice of optometry any person not duly licensed to practice under this Act;

~~"[(8) the licensee directly or indirectly employs solicitors, canvassers or agents for the purpose of obtaining patronage;]~~

~~"(7) [(9)]~~ the licensee lends, leases, rents or in any other manner places his license at the disposal or in the service of any person not licensed to practice optometry in this state;

~~"(8) [(10)]~~ the applicant or licensee has willfully or repeatedly violated any of the provisions of this Act;

~~"(9) [(11)]~~ the licensee has willfully or repeatedly represented to the public or any member thereof that he is authorized or competent to cure or treat diseases of the eye; or

~~"(10) [(12)]~~ the licensee has his right to practice optometry suspended or revoked by any federal agency for a cause which in the opinion of the board warrants such action[;]

~~"[(13) the applicant or licensee has been finally convicted of violation of Article 773 of the Penal Code].~~

~~"(b) Any person may begin proceedings [Proceedings] under this section [shall be begun] by filing charges with the board in writing and under oath. If charges are filed against a person or if the board proposes to refuse a person's application for a license or to suspend or revoke a person's license, the person is entitled to a hearing before the board. Except as provided by Subsection (c) of this section, proceedings are governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes). [Said charges may be made by any person or persons. The chairman of the board shall fix a time and place for a hearing and shall cause a copy of the charges, together with a notice of the time and place fixed for the hearing, to be served on the respondent or his counsel at least 10 days prior thereto. When personal service cannot be effected, the board shall cause to be published once a week for two successive weeks a notice of the hearing in a newspaper published in the county wherein the respondent was last known to practice, and shall mail a copy of the charges and of such notice to the respondent at his last known address. When publication of the notice is necessary, the date of hearing shall not be less than 10 days after the last date of the publication of the notice.]~~

~~"(c) The petition for judicial review of a board action may be filed in a district court in the county of residence of the person against whom the original charges were filed [At said hearing the respondent shall have the right to appear either personally or by counsel, or both, to produce witnesses and evidence on his behalf, to cross examine witnesses and to have subpoenas issued by the board. The board shall thereupon determine the charges upon their merits].~~

~~"(d) [Any person whose license to practice optometry has been refused or has been revoked or suspended by the board may, within 20 days after the making and entering of such order, take an appeal to any of the district courts of the county of his residence, but the decision of the board shall not be stayed or enjoined except upon application to such district court after notice to the board.]~~

~~"[(e)]~~ Upon application, the board may reissue a license to practice optometry to a person whose license has been revoked but such application shall not be made prior to one year after the revocation and shall be made in such manner and form as the board may require.

~~"(e) [(f)]~~ Nothing in this Act shall be construed to prevent the administrator or executor of the estate of a deceased optometrist from employing a licensed optometrist to carry on the practice of such deceased during the administration of such estate nor to prevent a licensed optometrist

from working for such person during the administration of the estate when the legal representative thereof has been authorized by the county judge to continue the operation of such practice.

"(f) A violation of this Act which occurs two or more years prior to the filing of a complaint which results in a disciplinary hearing before the board on that complaint shall not be considered a violation for purposes of disciplinary action under Subdivisions (8) and (9) of Subsection (a) of this section."

"Section 5.09. DECEPTIVE ADVERTISING [BY OPTOMETRISTS]. (a) A person may not publish or display or cause or permit to be published or displayed in any newspaper or by radio, television, billboard, window display, or any other means or medium, any statement or advertisement concerning ophthalmic services or materials, including but not limited to lenses, frames, spectacles, contact lenses, or parts thereof, which is false, deceptive, or misleading. [No optometrist shall publish or display, or knowingly cause or permit to be published or displayed by newspaper, radio, television, window display, poster, sign, billboard, or any other advertising media, any statement or advertisement of any price offered or charged by him for any ophthalmic services or materials, or any statement or advertisement concerning ophthalmic lenses, frames, eyeglasses, spectacles, or parts thereof which is fraudulent, deceitful, misleading, or which in any manner whatsoever tends to create a misleading impression, including statements or advertisements of bait, discount, premiums, gifts, or any statements or advertisements of a similar nature, import, or meaning.]

"(b) Any advertisement of prescription spectacles or contact lenses is required to contain language to the effect that an eye doctor's prescription is required for the purchase of such prescription spectacles or contact lenses.

"(c) Any advertisement of the price of prescription spectacles or contact lenses is required to contain the following information:

"(1) a statement of whether or not the cost of an examination by an eye doctor is included in the price;

"(2) if the advertised goods are to be available to the public at the advertised price for less than 30 days after the date of publication of the advertisement, the advertisement shall state the time limitation on the offer;

"(3) if the advertised goods are to be available to the public in limited quantities and no rainchecks are given upon total depletion of the inventory of the goods advertised, the advertisement shall state the total quantity available to all customers;

"(4) if the advertised goods are to be available to the public at a limited number per customer, the advertisement shall state the limit per customer.

"(d) Any person who fails to satisfy the requirements of Subsection (b) or (c) above shall be deemed to have published a false, deceptive, or misleading statement within the meaning of this section.

"(e) Any person who shall be injured by another person who violates any provision of this section may institute suit in any district court of the county wherein the violation is alleged to have occurred to require enforcement by injunctive procedures and to recover damages sustained, plus costs of court and reasonable attorney's fees.

"(f) The attorney general or the Texas Optometry Board may institute suit in any district court of the county in which a violation of this section is alleged to have occurred to require enforcement by injunctive procedures and to recover a civil penalty not to exceed \$10,000 per violation, plus costs of court and reasonable attorney's fees.

"(g) Violations of this section are actionable under the Deceptive Trade Practices-Consumer Protection Act, as amended (Subchapter E, Chapter 17,

Title 2, Business & Commerce Code). [~~This section shall not operate to prohibit optometrists who also own, operate, or manage a dispensing opticianry from advertising in any manner permitted under any section of this bill so long as such advertising is done in the name of the dispensing opticianry and not in the name of the optometrist in his professional capacity.~~]

~~"Section 5.10. BOARD RULES RESTRICTING ADVERTISING [BY DISPENSING OPTICIANS]. The board may not adopt substantive rules restricting competitive bidding or advertising by a person regulated by the board except to adopt such rules as are necessary to prevent false, misleading, or deceptive practices. [(a) No person, firm or corporation shall publish or display or cause or permit to be published or displayed in any newspaper or by radio, television, window display, poster, sign, billboard or any other means or media any statement or advertisement concerning ophthalmic lenses, frames, eyeglasses, spectacles or parts thereof which is fraudulent, deceitful or misleading, including statements or advertisements of bait, discount, premiums, price, gifts or any statements or advertisements of a similar nature, import or meaning.~~

~~"[(b) No person, firm or corporation shall publish or display or cause or permit to be published or displayed in any newspaper, or by radio, television, window display, poster, sign, billboard or any other means or media, any statement or advertisement of or reference to the price or prices of any eyeglasses, spectacles, lenses, contact lenses or any other optical device or materials or parts thereof requiring a prescription from a licensed physician or optometrist unless such person, firm or corporation complies with the provisions of Subsections (c) -(j) of this section.~~

~~"[(c) The person, firm or corporation shall obtain from the board an 'Advertising Permit,' which permit shall be granted to any person, firm or corporation which is engaged in the business of a dispensing optician in Texas.~~

~~"[(d) Such person, firm or corporation shall after receipt of such permit, but before beginning any such advertising, file with the board a list of prices which shall be charged for such eyeglasses, spectacles, lenses, contact lenses or other optical devices or materials or parts thereof in each and all of the following categories:~~

- ~~"[(1) single vision lenses;~~
- ~~"[(2) kryptok bifocal lenses;~~
- ~~"[(3) regular bifocal lenses;~~
- ~~"[(4) trifocal lenses;~~
- ~~"[(5) aphakic lenses;~~
- ~~"[(6) prism lenses;~~
- ~~"[(7) double segment bifocal lenses;~~
- ~~"[(8) subnormal vision lenses;~~
- ~~"[(9) contact lenses.~~

~~"[(e) No change may be made in any such price advertisement until the change has been filed with the board.~~

~~"[(f) Any advertisement or statement published or displayed as above described which contains the price of any of the categories shown above shall also contain the prices of all other categories and all such items, and the prices thereof, shall be published or displayed with equal prominence. No advertisement which shows the price of items listed in the categories shown above shall contain any language which directly or indirectly compares the prices so quoted with any other prices of similar items. In the event an 'Advertising Permit' is issued to a dispensing optician there shall be displayed prominently in each reception room and display room of each office owned or operated by such dispensing optician a complete current list of all prices on file with the board as~~

provided above. In showing the price of 'all other categories and all such items' as required by this section, it shall be permissible to combine two or more categories into one general category of 'all other lenses' and designate the price thereby of 'up to \$' which represents the highest price of any lenses included within this combined general category. Should there be a category in which two or more price differentials exist, it shall be permissible for the category to have a single listing in the advertisement with the lowest and the highest price in the category designated.

"[(g) In the event the dispensing optician owns more than one office, the prices for all such eyeglasses, spectacles, lenses, contact lenses or other optical devices or materials or parts thereof in the same category shall be the same in all offices located within the geographical limits of a county or a city regardless of the name under which such dispensing optician operates such offices.

"[(h) All such eyeglasses, spectacles, lenses, contact lenses, or other optical devices or materials or parts thereof must conform to standards of quality as promulgated by the American Standards Association, Inc., and commonly known as Z80.1-1964 standards.

"[(i) On or before April 1, of each calendar year each person, firm or corporation holding an 'Advertising Permit' hereunder shall file with the board a statement sworn to by such person or officer of such firm or corporation specifying separately for each office owned by such person, firm or corporation the percentage of the total unit sales of each such office owned by such person, firm or corporation allocated to sales of single vision lenses, bifocal lenses, trifocal lenses, contact lenses and all other lenses requiring a prescription from a licensed physician or optometrist during the prior calendar year. The person making such sworn statement shall be subject to the obligations and penalties of Article 310 of the Penal Code.

"[(j) All items advertised by price in accordance with this section shall be available at the advertised price without limit to quantity to all persons including, but not limited to, individuals, physicians, optometrists, dispensing opticians or the employees of any of them.

"[(k) Willful or repeated violation by any person, firm or corporation holding an 'Advertising Permit' hereunder of any provision of Subsections (d)-(j) of this section shall be grounds for suspension of such 'Advertising Permit' by the board for a period not to exceed six months. If after the expiration of such suspension, the board, after a hearing, finds that there has been a second or subsequent willful or repeated violation of any provision of Subsections (d)-(j) of this section such 'Advertising Permit' shall be permanently cancelled and may not be reissued or renewed.]

"Section 5.11. CONTROL OF OPTOMETRY PROHIBITED [WINDOW DISPLAYS AND SIGNS]. (a) No person who is a manufacturer, wholesaler, or retailer of ophthalmic goods may: [It shall be unlawful for any optometrist:]

"(1) directly or indirectly have any economic interest in or control over the business or practice of a licensed optometrist, or [to display or cause to be displayed any spectacles, eyeglasses, frames or mountings, goggles, lenses, prisms, contact lenses, eyeglass cases, ophthalmic material of any kind, optometric instruments, or optical tools or machinery, or any merchandise or advertising of a commercial nature in his office windows or reception rooms;]

"(2) directly or indirectly control or attempt to control the professional judgment or the manner of practice of a licensed optometrist, or

"(3) directly or indirectly employ a licensed optometrist if any part of such employee's duties involve the practice of optometry as defined in this Act. [to make use of or permit the continuance of any colored or neon lights, eyeglasses

~~or eye signs, whether painted, neon, decalcomania, or any other either in the form of eyes or structures resembling eyes, eyeglass frames, eyeglasses or spectacles, whether lighted or not, or any other kind of signs or displays of a commercial nature in his optometric office.]~~

“(b) For purposes of this section, ‘economic interest in or control over the business or practice of a licensed optometrist’ shall be presumed if the manufacturer, wholesaler, or retailer of ophthalmic goods has directly or indirectly leased, provided, or arranged for the leasing or providing of office space, office improvements, office equipment, or office furnishings to a licensed optometrist; and such presumption may be rebutted only by clear and convincing evidence.

“(c) For purposes of this section, ‘economic interest in or control over the business or practice of a licensed optometrist’ includes but is not limited to any of the following:

“(1) directly or indirectly providing, leasing, hiring, sharing, or arranging for the providing, leasing, hiring, or sharing of office equipment, furnishings, employees, business services, or similar items to a licensed optometrist;

“(2) directly or indirectly loaning or arranging for a loan, including guaranteeing of a loan, to a licensed optometrist;

“(3) directly or indirectly selling or granting a licensed optometrist any franchise right or other thing of value which is not freely available to all licensed optometrists on the same terms;

“(4) expressly or impliedly requiring or attempting to require any licensed optometrist to purchase or acquire goods or services from one manufacturer or wholesaler of ophthalmic goods to the exclusion in whole or in part of the goods or services of another manufacturer or wholesaler of ophthalmic goods.

“(d) It is the intent of the legislature to prevent manufacturers, wholesalers, and retailers of ophthalmic goods from having any economic interest in or control over the business or practice of a licensed optometrist or any influence or control over the professional judgment of doctors of optometry, and the provisions of this section shall be liberally construed to carry out this intent.

“(e) Any person who shall be injured by another person who violates any provision of this section may institute suit in any district court in the county wherein the violation is alleged to have occurred to require enforcement of this section by injunctive procedures and to recover damages sustained, plus costs of court and reasonable attorney’s fees. Where a manufacturer, wholesaler, or retailer of ophthalmic goods has been found to be in violation of this section, any person injured as a result of such violation, including any optometrist who is a lessee as referred to in Subsection (b) above, shall be entitled to all remedies in this section.

“(f) The attorney general or the Texas Optometry Board may institute suit against a manufacturer, wholesaler, or retailer of ophthalmic goods in any district court of the county in which a violation of this section is alleged to have occurred to require enforcement by injunctive procedures and to recover a civil penalty not to exceed \$1,000 per day for each day that a violation of this section is found to have occurred, plus costs of court and reasonable attorney’s fees.

“(g) Violations of this section are actionable under the Deceptive Trade Practices-Consumer Protection Act, as amended (Subchapter E, Chapter 17, Title 2, Business & Commerce Code).

“(h) This section shall not apply where the manufacturer, wholesaler, or retailer of ophthalmic goods is a licensed optometrist or a licensed physician or legal entity 100 percent owned and controlled by one or more licensed optometrists or licensed physicians.

"(i) Nothing in this section is intended to prevent a manufacturer, wholesaler, or retailer of ophthalmic goods from providing, selling, or leasing its products to a licensed optometrist for cash or on terms, provided that such ophthalmic goods are provided in the ordinary course of business and are made available to all licensed optometrists in the state on the same terms.

"(j) Any written office lease which was in existence on the effective date of this Act, and which covers a premises which was in use on that date as an optometric office, or which was under construction and designed for use specifically as an optometric office on that date, and which except for this section would have been lawful, shall continue to be lawful after the effective date of this Act, and the parties to that lease shall not be considered in violation of this section by reason of that lease. It is the intent of this subsection that parties to a lease described in this subsection may transfer and assign their respective interests under that lease and may renew, extend, or modify the lease without losing this exemption, provided the lease is not modified to include office space which is noncontiguous to the original leased premises.

"(k) Any bona fide written agreement, other than a lease of real estate, which was fully in effect and signed by all parties prior to the effective date of this Act, and which except for this section would have been lawful, shall continue to be lawful after the effective date of this Act; and the parties to that agreement shall not be considered in violation of this section by reason of that agreement. If the written agreement is bona fide and was not entered into for purposes of qualifying under this subsection, then the parties to the agreement may transfer and assign their respective interests under the agreement and may renew, extend, or modify the agreement without losing this exemption. Any agreement which was entered into, reduced to writing, and signed prior to January 1, 1981, shall be presumed to be bona fide and qualified for this exemption. Any agreement entered into, reduced to writing, or signed after January 1, 1981, and before the effective date of this Act shall be presumed not to be bona fide for purposes of qualifying under this subsection; and in any action brought under this section the parties to the agreement shall have the burden of showing that the agreement is bona fide and was not made for purposes of qualifying under this subsection. [Any optometrist practicing optometry on or after April 15, 1969 in a manner, or under conditions, contrary to any of the provisions of this Section 5.11 by virtue of occupying premises under an existing or negotiated lease in effect on April 15, 1969, shall not be subject to the provisions of this Section 5.11 until the expiration of the primary term of the lease, or until January 1, 1979, whichever occurs sooner, but no such lease may be extended beyond the primary term by the exercise of any option. Provided, however, that as to any such lease expiring on or before June 1, 1970, such lease may be continued in effect until June 1, 1970.]"

"Section 5.13. PROFESSIONAL RESPONSIBILITY. (a) The provisions of this section are adopted in order to protect the public in the practice of optometry, better enable members of the public to fix professional responsibility, and further safeguard the doctor-patient relationship.

"(b) No optometrist shall divide, share, split, or allocate, either directly or indirectly, any fee for optometric services or materials with any lay person, firm or corporation, provided that this rule shall not be interpreted to prevent an optometrist from paying an employee in the regular course of employment, and provided further, that it shall not be construed as a violation of this Act for any optometrist to lease space from an establishment on a percentage or gross receipts basis or to sell, transfer or assign accounts receivable.

"(c) No optometrist shall divide, share, split or allocate, either directly or indirectly, any fee for optometric services or materials with another optometrist

or with a physician except upon a division of service or responsibility provided that this rule shall not be interpreted to prevent partnerships for the practice of optometry. This Act does not prohibit an optometrist from being employed on a salary, with or without bonus arrangements, by a licensed optometrist or physician, regardless of the amount of supervision exerted by the employing optometrist or physician over the office in which the employed optometrist works, provided such bonus arrangements, if any, shall not be based in whole or in part on the business or income of any optical company.

“(d) An optometrist may practice optometry under a trade name or an assumed name or under the name of a professional corporation or a professional association. Every optometrist practicing in the State of Texas, including those practicing under a trade or assumed name, shall be required to display the actual name under which he is licensed by the board in a manner such that his name will be visible to the public prior to entry of the optometrist’s office reception area. [No optometrist shall practice or continue to practice optometry under, or use in connection with his practice of optometry, any assumed name, corporate name, trade name, or any name other than the name under which he is licensed to practice optometry in Texas; provided, however, that optometrists practicing as partners may practice under the full or last names of the partners. Optometrists who are employed by other optometrists shall practice in their own names, but may practice in an office listed under the name of the individual optometrist or partnership of optometrists by whom they are employed. In event of the death or retirement of a partner, the surviving partner or partners practicing optometry in a partnership name may, with the written permission of the retiring partner or the deceased optometrist’s widow or other legal representative, as the case may be, continue to practice with the name of the deceased partner in the partnership name for a period not to exceed one year from the date of his death, or during the period of administration of a deceased partner’s estate as provided by Section 4.04(f) of this Act, whichever period shall be the longer.]

“(c) No optometrist shall use, cause or allow to be used, his name or professional identification, as authorized by Article 4590c, as amended, Revised Civil Statutes of Texas, on or about the door, window, wall, directory, or any sign or listing whatsoever, of any office, location or place where optometry is practiced, unless said optometrist is actually present and practicing optometry therein during the hours such office, location or place of practice is open to the public for the practice of optometry.

“(f) No optometrist shall practice or continue to practice optometry in any office, location or place of practice where any name, names or professional identification on or about the door, window, wall, directory, or any sign or listing whatsoever, or in any manner used in connection therewith, shall indicate or tend to indicate that such office, location or place of practice is owned, operated, supervised, staffed, directed or attended by any person not actually present and practicing optometry therein during the hours such office, location or place of practice is open to the public for the practice of optometry.

“(g) The requirement of Subsections (e) and (f) of this section that an optometrist be ‘actually present’ in an office, location or place of practice holding his name out to the public shall be deemed satisfied if the optometrist is, as to such office, location or place of practice, either:

“(1) physically present therein more than half the total number of hours such office, location, or place of practice is open to the public for the practice of optometry during each calendar month for at least nine months in each calendar year; or

"(2) physically present in such office, location, or place of practice for at least one-half of the time such person conducts, directs, or supervises any practice of optometry.

"(h) Nothing in this section shall be interpreted as requiring the physical presence of a person who is ill, injured, or otherwise incapacitated temporarily.

"(i) The requirement of Subsections (e) and (f) of this section that an optometrist be 'practicing optometry' at an office, location, or place of practice holding his name out to the public shall be deemed satisfied if the optometrist regularly makes personal examination at such office, location, or place of practice of the eyes of some of the persons prescribed for therein or regularly supervises or directs in person at such office, location or place of practice such examinations.

"(j) The willful or repeated failure or refusal of an optometrist to comply with any of the provisions of this section shall be considered by the board to constitute prima facie evidence that such optometrist is guilty of violation of this Act, and shall be sufficient ground for the filing of charges to cancel, revoke or suspend his license. The charges shall state the specific instance or instances in which it is alleged that the rule was not complied with. Alternatively, or in addition to the above, it shall be the duty of the board to institute and prosecute an action in a court of competent jurisdiction to restrain or enjoin the violation of any of the preceding rules.

~~"[(k) Any optometrist practicing optometry on or after April 15, 1969 in a manner, or under conditions, contrary to Subsections (b), (c), (d), and (f) of this Section 5.13 by virtue of occupying premises under an existing or negotiated lease in effect on April 15, 1969, shall not be subject to said Subsections (b), (c), (d) and (f) of this Section 5.13 until the expiration of the primary term of the lease, or until January 1, 1979, whichever occurs sooner, but no such lease may be extended beyond the primary term by the exercise of any option. Provided, however, that as to any such lease expiring on or before June 1, 1970, such lease may be continued in effect until June 1, 1970.]"~~

"Section 5.15. RELATIONSHIPS OF OPTOMETRISTS WITH DISPENSING OPTICIANS. (a) The purpose of this section is to insure that the practice of optometry shall be carried out in such a manner that it is completely and totally separated from the business of any dispensing optician, with no control of one by the other and no solicitation for one by the other, except as hereinafter set forth.

"(b) If an optometrist occupies space for the practice of optometry in a building or premises in which any person, firm, or corporation engages in the business of a dispensing optician, the space occupied by the optometrist shall be separated from the space occupied by the dispensing optician by solid partitions or walls from floor to ceiling. The space occupied by the optometrist shall have a patient's entrance opening on a public street, hall, lobby, corridor, or other public thoroughfare. An entrance is not a patient's entrance within the meaning of this subsection unless actually used as an entrance by the optometrist's patients.

"(c) An optometrist may engage in the business of a dispensing optician, own stock in a corporation engaged in the business of a dispensing optician, or be a partner in a firm engaged in the business of a dispensing optician, but the books, records, and accounts of the firm or corporation must be kept separate and distinct from the books, records, and accounts of the practice of the optometrist.

"(d) No person, firm, or corporation engaged in the business of a dispensing optician, other than a licensed optometrist or physician, shall have, own, or acquire any interest in the practice, books, records, files, equipment, or

materials of a licensed optometrist, or have, own, or acquire any interest in the premises or space occupied by a licensed optometrist for the practice of optometry other than a lease which satisfies the requirements of Subsection (j) of Section 5.11 of this Act and which is for a specific term without retention of the present right of occupancy on the part of the dispensing optician. In the event an optometrist or physician who is also engaged in the business of a dispensing optician (whether as an individual, firm, or corporation) does own an interest in the practice, books, records, files, equipment or materials of another licensed optometrist, he shall maintain a completely separate set of books, records, files, and accounts in connection therewith. ~~[Any optometrist practicing optometry on or after April 15, 1969 in a manner, or under conditions, contrary to any of the provisions of this Section 5.15 by virtue of occupying premises under an existing or negotiated lease in effect on April 15, 1969, shall not be subject to the provisions of this Section 5.15 until the expiration of the primary term of the lease, or until January 1, 1979, whichever occurs sooner, but no such lease may be extended beyond the primary term by the exercise of any option. Provided, however, that as to any such lease expiring on or before June 1, 1970, such lease may be continued in effect until June 1, 1970.]~~

"(e) If, after examining a patient, an optometrist believes that lenses are required to correct or remedy any defect or abnormal condition of vision, the optometrist shall so inform the patient and shall expressly indicate verbally or by other means ~~[state]~~ that the patient has two alternatives for the preparation of the lenses according to the optometrist's prescription: First, that the optometrist will prepare or have the lenses prepared according to the prescription; and second, that the patient may have the prescription filled by any dispensing optician ~~[(not naming or suggesting any particular dispensing optician)]~~ but should return for an optometrical examination of the lenses. ~~[If the patient chooses the first alternative, the optometrist may refer the patient to a particular dispensing optician for selection of frames and filling the prescription.]~~

~~"[(f) If any person, on visiting the premises of any dispensing optician without presenting a prescription written by a licensed physician or optometrist, makes any inquiry or request concerning an examination or the obtaining of any ophthalmic materials or services requiring such a prescription, then the optician or his agent or employee may not respond in any manner except to state in effect that the optician cannot examine the patient or prescribe or fit glasses or lenses, but that the patient seeking such service must go to a licensed physician or optometrist. If there is no further inquiry from the prospective patient, the optician or his agent or employee may not make any further statement of any kind. If, however, the prospective patient makes an inquiry as to where or to whom he may go to obtain such service, the optician or his agent or employee shall give the prospective patient the names and addresses of at least three persons, each of whom is either a licensed ophthalmologist or a licensed optometrist whose practice is located within a radius of five miles from the optician's place of business, or if there are fewer than three of these, the name and address of each licensed ophthalmologist or licensed optometrist whose practice is so located.]"~~

SECTION 3. Section 5.18, Texas Optometry Act, as amended (Article 4552-1.01 et seq., Vernon's Texas Civil Statutes), is renumbered Section 5.19, and a new section is added immediately after Section 5.17 to read as follows:

"Section 5.18. PRACTICE OF OPTOMETRY WITHOUT A LICENSE. (a) It shall be a violation of this Act for any person who is not a licensed optometrist or a licensed physician to engage in the practice of optometry as such practice is defined in this Act.

"(b) Any person who shall be injured by another person who violates this section may institute suit in any district court in the county wherein the violation is alleged to have occurred to require enforcement by injunctive procedures and to recover damages sustained, plus costs of court and reasonable attorney's fees.

"(c) The attorney general's office or the Texas Optometry Board may institute suit in any district court of the county in which a violation of this section is alleged to have occurred to require enforcement by injunctive procedures and to recover a civil penalty not to exceed \$10,000 per violation, plus costs of court and reasonable attorney's fees.

"(d) Violations of this section are actionable under the Deceptive Trade Practices-Consumer Protection Act, as amended (Subchapter E, Chapter 17, Title 2, Business & Commerce Code)."

SECTION 4. (a) A person who holds office as a member of the Texas Optometry Board on the effective date of this Act shall continue to hold the office for the term for which the member was originally appointed and shall for the balance of the member's current term satisfy the qualifications for office set forth in Section 2.02 of this Act, if the member satisfies the qualifications for office under the Optometry Act which existed immediately prior to the effective date of this Act.

(b) After the effective date of this Act, the governor shall appoint two initial public members and one initial optometrist member affiliated with the Texas Association of Optometrists, Inc., to the board. The governor shall designate one public member for a term expiring January 31, 1985, one public member for a term expiring January 31, 1987, and the initial optometrist member affiliated with the Texas Association of Optometrists, Inc., for a term expiring January 31, 1985.

(c) After January 31, 1983, the governor shall appoint one optometrist member affiliated with the Texas Association of Optometrists, Inc., to fill the office of an incumbent optometrist member whose term expires January 31, 1983. After January 31, 1983, the governor shall appoint one public member to fill the office of an incumbent optometrist member whose term expires January 31, 1983.

(d) After January 31, 1985, the successor of one of the incumbent optometrist members whose terms expire January 31, 1985, shall be appointed by the governor for a term expiring January 31, 1989.

(e) Successors of board members whose terms expire on January 31, 1981, shall be appointed by the governor under the optometry laws existing immediately prior to the effective date of this Act.

(f) The portion of Section 2.14 of this Act which authorizes the board to promulgate substantive rules shall not become effective until January 31, 1983.

SECTION 5. A rule adopted by the Texas Optometry Board before the effective date of this Act that conflicts with the Texas Optometry Act (Article 4552-1.01 et seq., Vernon's Texas Civil Statutes), as amended by this Act, is void. Within 90 days after the effective date of this Act, the board shall repeal the rule.

SECTION 6. Subsection (i) of Section 5.14, Texas Optometry Act (Article 4552-1.01 et seq., Vernon's Texas Civil Statutes), is repealed.

SECTION 7. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The committee amendment was read.

Senator Doggett offered the following amendment to the committee amendment:

Amend Committee Amendment 1 S.B. 109 as follows:

1) Strike quoted Section 5.11 which begins on line 33 of page 10 and substitute the following:

"Section 5.11. CONTROL OF OPTOMETRY PROHIBITED
[WINDOW DISPLAYS AND SIGNS].

"(a) Any person who is a manufacturer, wholesaler, or retailer of ophthalmic goods is prohibited from: [It shall be unlawful for any optometrist:]

"(1) directly or indirectly controlling or attempting to control the professional judgment, the manner of practice, or the practice of an optometrist or [to display or cause to be displayed any spectacles, eyeglasses, frames or mountings, goggles, lenses, prisms, contact lenses, eyeglass cases, ophthalmic material of any kind, optometric instruments, or optical tools or machinery, or any merchandise or advertising of a commercial nature in his office windows or reception rooms;]

"(2) directly or indirectly employing or hiring or contracting for the services of an optometrist if any part of such optometrist's duties involve the practice of optometry or [to make use of or permit the continuance of any colored or neon lights, eyeglasses or eye signs, whether painted, neon, decalcomania, or any other either in the form of eyes or structures resembling eyes, eyeglass frames, eyeglasses or spectacles, whether lighted or not, or any other kind of signs or displays of a commercial nature in his optometric office.]

"(3) directly or indirectly making any payment to an optometrist for any service not actually rendered.

"(b) For purposes of this section "controlling or attempting to control the professional judgment, the manner of practice, or the practice of an optometrist" shall include but not be limited to:

"(1) setting or attempting to influence the professional fees of an optometrist,

"(2) setting or attempting to influence the office hours of an optometrist,

"(3) restricting or attempting to restrict an optometrist's freedom to see patients on an appointment basis,

"(4) terminating or threatening to terminate any lease, agreement, or other relationship in an effort to control the professional judgment, manner of practice, or practice of an optometrist,

"(5) providing, hiring, or sharing employees or business services or similar items to or with an optometrist or

"(6) making or guaranteeing a loan to an optometrist in excess of the value of the collateral securing the loan.

"(c) It is the intent of the legislature to prevent manufacturers, wholesalers, and retailers of ophthalmic goods from controlling or attempting to control the professional judgment, manner of practice or the practice of an optometrist, and the provisions of this section shall be liberally construed to carry out this intent.

"(d) Any person who shall be injured by another person who violates any provision of this section may institute suit in any district court in the county wherein the violation is alleged to have occurred to require enforcement of this section by injunctive procedures and to recover damages sustained, plus costs of court and reasonable attorney's fees. Where a manufacturer, wholesaler, or

retailer of ophthalmic goods has been found to be in violation of this section, any person injured as a result of such violation, including any optometrist who is a lessee of such manufacturer, wholesaler, or retailer, shall be entitled to all remedies in this section.

"(e) The attorney general or the Texas Optometry Board may institute suit against a manufacturer, wholesaler, or retailer of ophthalmic goods in any district court of the county in which a violation of this section is alleged to have occurred to require enforcement by injunctive procedures and to recover a civil penalty not to exceed \$1,000 per day for each day that a violation of this section is found to have occurred, plus costs of court and reasonable attorney's fees.

"(f) Violations of this section are actionable under the Deceptive Trade Practices-Consumer Protection Act, as amended (Subchapter E, Chapter 17, Title 2, Business & Commerce Code).

"(g) This section shall not apply where the manufacturer, wholesaler, or retailer of ophthalmic goods is a licensed optometrist or a licensed physician or legal entity 100 percent owned and controlled by one or more licensed optometrists or licensed physicians; however, the exception set forth in this subsection shall not apply where the optometrist or legal entity has offices at more than three locations. ~~[Any optometrist practicing optometry on or after April 15, 1969 in a manner, or under conditions, contrary to any of the provisions of this Section 5.11 by virtue of occupying premises under an existing or negotiated lease in effect on April 15, 1969, shall not be subject to the provisions of this Section 5.11 until the expiration of the primary term of the lease, or until January 1, 1979, whichever occurs sooner, but no such lease may be extended beyond the primary term by the exercise of any option. Provided, however, that as to any such lease expiring on or before June 1, 1970, such lease may be continued in effect until June 1, 1970.]~~"

2) On page 14, lines 33-35, delete the following: "which satisfies the requirements of Subsection (j) of Section 5.11 of this Act and which is".

3) On page 15, line 46, insert the words "be deemed to" between the word "term" and the word "satisfy".

The amendment to the committee amendment was read and was adopted.

Senator Doggett offered the following amendment to the committee amendment:

Amend Committee Amendment No. 1 **S.B. 109** by adding the following immediately after quoted Subsection 1.02(5) on line 20 of page 1:

"(6) Nothing in this Act shall be construed as preventing a licensed optometrist from performing vision therapy, hand-eye coordination exercises, visual training, and developmental vision therapy, or from the evaluation and remediation of learning or behavioral disabilities associated with or caused by a defective or abnormal condition of vision."

The amendment to the committee amendment was read and was adopted.

Question recurring on the adoption of the committee amendment as amended, the committee amendment as amended was adopted.

On motion of Senator Doggett and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment.

SENATE BILL 109 ON THIRD READING

Senator Doggett moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that S.B. 109 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Wilson.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Wilson.

(President in Chair)

COMMITTEE SUBSTITUTE SENATE BILL 779 ON SECOND READING

On motion of Senator Vale and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

C.S.S.B. 779, Relating to requiring certain products to contain additives to discourage the intentional inhalation of toxic fumes or vapors; giving the Texas Department of Health certain duties regarding the products; providing a penalty; and declaring an emergency.

The bill was read second time and was passed to engrossment.

COMMITTEE SUBSTITUTE SENATE BILL 779 ON THIRD READING

Senator Vale moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that C.S.S.B. 779 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Wilson.

The bill was read third time and was passed.

BILL SIGNED

The President announced the signing in the presence of the Senate, after the caption had been read, the following enrolled bill:

S.B. 389

COMMITTEE SUBSTITUTE SENATE BILL 737 ON SECOND READING

Senator Travis moved to suspend the regular order of business to take up for consideration at this time:

C.S.S.B. 737, Relating to the deadline for filing an application for a place on a primary election ballot.

The motion prevailed by the following vote: Yeas 24, Nays 6.

Yeas: Andujar, Blake, Brown, Caperton, Farabee, Harris, Howard, Jones, Kothmann, Leedom, McKnight, Meier, Mengden, Ogg, Parker, Richards, Sarpalius, Short, Snelson, Traeger, Travis, Truan, Uribe, Williams.

Nays: Brooks, Doggett, Glasgow, Mauzy, Santiesteban, Vale.

Absent-excused: Wilson.

The bill was read second time and was passed to engrossment.

RECORD OF VOTES

Senators Mauzy and Doggett asked to be recorded as voting "Nay" on the passage of the bill to engrossment.

COMMITTEE SUBSTITUTE SENATE BILL 737 ON THIRD READING

Senator Travis moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.S.B. 737** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 4.

Yeas: Andujar, Blake, Brown, Caperton, Farabee, Glasgow, Harris, Howard, Jones, Kothmann, Leedom, McKnight, Meier, Mengden, Ogg, Parker, Richards, Santiesteban, Sarpalius, Short, Snelson, Traeger, Travis, Truan, Uribe, Williams.

Nays: Brooks, Doggett, Mauzy, Vale.

Absent-excused: Wilson.

The bill was read third time and was passed.

RECORD OF VOTES

Senators Mauzy and Doggett asked to be recorded as voting "Nay" on the final passage of the bill.

SENATE BILL 1121 ON SECOND READING

On motion of Senator Traeger and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 1121, Relating to the appointment of additional bailiffs for the central jury room and the general panel in certain counties.

The bill was read second time.

Senator Traeger offered the following committee amendment to the bill:

Amend **S.B. 1121** on line 11, after “District Judges” add “with approval of Commissioners Court”

The committee amendment was read and was adopted.

On motion of Senator Traeger and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment.

SENATE BILL 1121 ON THIRD READING

Senator Traeger moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **S.B. 1121** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Wilson.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Wilson.

COMMITTEE SUBSTITUTE SENATE BILL 750 ON SECOND READING

On motion of Senator Brooks and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

C.S.S.B. 750, Relating to regulation of the practice of physical therapy; providing penalties.

The bill was read second time and was passed to engrossment.

COMMITTEE SUBSTITUTE SENATE BILL 750 ON THIRD READING

Senator Brooks moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.S.B. 750** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Wilson.

The bill was read third time and was passed.

COMMITTEE SUBSTITUTE SENATE BILL 897 ON SECOND READING

On motion of Senator Glasgow and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

C.S.S.B. 897, Relating to the regulation of the sale of motor vehicles.

The bill was read second time and was passed to engrossment.

COMMITTEE SUBSTITUTE SENATE BILL 897 ON THIRD READING

Senator Glasgow moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.S.B. 897** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Wilson.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Wilson.

SENATE RESOLUTION 450 ON SECOND READING

Senator Mengden moved to suspend the regular order of business to take up for consideration at this time:

S.R. 450, Directing the Senate Committee on Natural Resources to study problems relating to reports of declining numbers of redfish and speckled sea trout in Texas coastal waters.

The motion prevailed by the following vote: Yeas 26, Nays 4.

Yeas: Andujar, Brooks, Brown, Caperton, Doggett, Farabee, Glasgow, Howard, Jones, Kothmann, Leedom, McKnight, Meier, Mengden, Parker, Richards, Santiesteban, Sarpalius, Short, Snelson, Traeger, Travis, Truan, Uribe, Vale, Williams.

Nays: Blake, Harris, Mauzy, Ogg.

Absent-excused: Wilson.

The resolution was read second time and was adopted.

RECORD OF VOTES

Senators Mauzy and Ogg asked to be recorded as voting "Nay" on the adoption of the resolution.

**MOTION TO PLACE
COMMITTEE SUBSTITUTE SENATE BILL 643 ON SECOND READING**

Senator Mauzy asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

C.S.S.B. 643, Relating to disciplinary measures against and conditions of employment of peace officers.

There was objection.

Senator Mauzy then moved to suspend the regular order of business and take up C.S.S.B. 643 for consideration at this time.

The motion was lost by the following vote: Yeas 16, Nays 13. (Not receiving two-thirds vote of Members present)

Yeas: Blake, Brooks, Caperton, Doggett, Glasgow, Harris, Kothmann, Mauzy, McKnight, Mengden, Parker, Santiesteban, Truan, Uribe, Vale, Williams.

Nays: Andujar, Brown, Farabee, Howard, Jones, Leedom, Meier, Ogg, Richards, Sarpalius, Snelson, Traeger, Travis.

Absent: Short.

Absent-excused: Wilson.

BILL AND RESOLUTIONS SIGNED

The President announced the signing in the presence of the Senate, after the caption had been read, the following enrolled bill and resolutions:

H.C.R. 90

H.C.R. 141

H.C.R. 142

H.C.R. 143

H.B. 1341

COMMITTEE SUBSTITUTE SENATE BILL 1167 ON SECOND READING

On motion of Senator Doggett and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

C.S.S.B. 1167, Relating to the authority of notaries public; amending Art. 5954, R.C.S., as amended; and declaring an emergency.

The bill was read second time.

Senator Farabee offered the following amendment to the bill:

Amend **S.B. 1167** by deleting at line 20 and 21 on Senate Printing the following:

“written symbols or abbreviations in shorthand or”

The amendment was read and was adopted.

On motion of Senator Doggett and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment.

COMMITTEE SUBSTITUTE SENATE BILL 1167 ON THIRD READING

Senator Doggett moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that C.S.S.B. 1167 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Wilson.

The bill was read third time and was passed.

COMMITTEE SUBSTITUTE SENATE BILL 623 ON SECOND READING

On motion of Senator Santiesteban and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

C.S.S.B. 623, Relating to the certification of social work practitioners; providing penalties.

The bill was read second time and was passed to engrossment.

COMMITTEE SUBSTITUTE SENATE BILL 623 ON THIRD READING

Senator Santiesteban moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that C.S.S.B. 623 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Yeas: Andujar, Blake, Brooks, Brown, Caperton, Doggett, Farabee, Glasgow, Harris, Howard, Jones, Kothmann, Mauzy, McKnight, Meier, Mengden, Ogg, Parker, Richards, Santiesteban, Sarpalius, Short, Snelson, Traeger, Travis, Truan, Uribe, Vale, Williams.

Nays: Leedom.

Absent-excused: Wilson.

The bill was read third time and was passed.

HOUSE CONCURRENT RESOLUTION 149

The President laid before the Senate the following resolution:

H.C.R. 149, Authorizing either house to adjourn from April 15, 1981, through April 20, 1981.

The resolution was read.

On motion of Senator Brooks and by unanimous consent, the resolution was considered immediately and was adopted.